IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 3279 OF 2005

IN

SUIT NO. 2974 OF 2005

Mancherji J. Cama and Ors. .....Plffs.
vs.
Virag G. Icchaporia .....Defnds.

Cyrus Ardeshir i/b. Pardiwala and Co.
for the plaintiffs.
Dinkar Rao for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 27th October, 2005.

P.C. :.

1. The present suit is filed for the recovery of possession of suit flat of 416 sq.ft situated at C/o. M.F. Cama Athornan Institute and M.M. Cama Education Fund, 12, Cama Park, Cara Road, Andheri (West), Mumbai-58.

2. The defendant was in service of the plaintiff and admittedly the service of the plaintiff has been terminated. The defendant has not vacated the said premises. The services are terminated in 18.11.2004. The defendant is thus gratuitous licencee inrespect of the said property. The learned counsel for the defendant does not dispute that the service of the plaintiff is terminated and he is no more in employment of the plaintiff herein. However his contention that this court has no jurisdiction in view of the provisions of S.22 r.w. S.47 of the Maharashtra Rent Control Act, 1999. At this prima-facie stage I am not inlinced to accept the contention that this court has no jurisdiction. I am of the opinion that the defendant is merely a gratuitous licencee and in the light of the judgment of this court in the case of Ramesh Dwarkadas Mehra vs. Indravati Dwarkadas Mehra reported in AIR 2001 Bom.470, this court has jurisdiction to deal with cases of gratuitous licencee. However if the defendant is so desirous he can raise the issue of jurisdiction under

section 9A of the CPC. If the issue is raised the same will be determined in accordance with the provisions of law. In the mean time I am of the opinion that the property is required to be protected. The plaintiff is prima-facie a trespasser in the suit property once his service are terminated.

3. In that view of the matter I appoint the Receiver of the said property. Court Receiver, High Court Bombay is directed not to disposses the defendant from the suit premises. However the defendant will be appointed as an agent of the Court Receiver on the usual terms and conditions security but on payment of royalty based on market rent. Till the Receiver takes possession there shall be an ad-interim order in terms of prayer clause (b).

4. Motion disposed off accordingly. No order as to costs.

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